

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD OF PUERTO  
RICO

as representative of

COMMONWEALTH OF PUERTO RICO

Debtors

PROMESA

Title III

CASE NO. 17 BK 3283-LTS

CLAIMS OBJECTIONS AND RESPONSES

TRIAL BY JURY DEMANDED AND  
ARTICLE III JUDGE DEMANDED

**ANSWER AND OPPOSITION TO OBJECTION TO CLAIM IN SIXTH OMINIBUS NON-  
SUBSTANTIVE OBJECTION (lt. #111) TO CLAIM BY EDILBERTO BERRIOS PÉREZ  
AND ARIADNE FEBLES GORDIAN**

TO THE HONORABLE COURT:

COME NOW, Claimants Edilberto Berrios Pérez and Ariadne Febles Gordián, as bond holders of The Government Development Bank with a proof of claim filed on May 24, 2018, without otherwise submitting to the jurisdiction of the Court, for the purpose of preserving and protecting all fundamental constitutional rights of the appearing parties, respectfully state and pray as follows:

**PRESERVATION OF RIGHTS, MINIMIZING DAMAGES  
AND PRESERVING CONSTITUTIONAL RIGHTS**

Nothing in this document invokes the court's adjudicative powers for any purpose, except to preserve the legal, contractual and constitutional rights of claimants. The appearance is made with the express purpose of protecting and preserving ALL constitutional rights and liberties and the structural diffusion of power which vests jurisdiction in various powers and limits through the land; as well as to protect the dignity of the U.S. District Court.

**SYNTHESIS OF THE OPPOSITION TO THE OBJECTION  
TO THE PROOF OF CLAIM FILED AND RELATED MATTERS**

Claimants are owners of a Five Hundred Thousand Dollar (\$500,000.00) bond issued by The Government Development Bank, SR NIS-ser H, with a maturity date of 08/01/2019. Purchase was made on December 22, 2011, and the trade was made through Oriental Financial Services, Trade number T70C64 (or T70C84). Evidence of the purchase conformation was submitted with the Proof of Claim filed, and is again attached hereto as Exhibits A and B. The filing was made to preserve all rights and no constitutional, contractual or legal right was waived.

Claimants herein voted in the plan confirmation process accepting the plan proposed, and did not consent to any third party releases.<sup>1</sup> The Proof of Claim was objected in the SIXTH Omnibus Objection~ item number 111, to Claim number 7999 filed on April 24, 2018. The reason stated for the objection is stated as follows:

Proof of claim purports to asset liabilities associated with municipal bond(s) and/or money loaned, but fails to provide any basis or supporting documentation for asserting a claim against COFINA, such that Debtors are unable to determine whether claimant has a valid claim against COFINA or any other Title III Debtors.

The evidence and exact numeration and data to establish title has again been provided herein and attached hereto. The Proof of Claim is against the Government Development Bank, which plan has already been confirmed and claimants herein did cast a vote accepting the plan, but refusing to consent to any third party releases.

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<sup>1</sup> We specifically preserve all rights against third parties that may be liable, and have not consented to third party releases under the plan or otherwise. See *In re Millennium Lab Holdings II, LLC*, 242 F.Supp.3d 322 (USDC, Del. 2017), Bankr. L. Rep. P 83, 087; *In re Lower Bucks Hosp.*, 571 F. App'x 139, 142-44 (3d Cir. 2014); *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 141-43 (2d Cir. 2005).

### **SUBSTANTIVE BASIS FOR THE OPPOSITION**

Claimants are owners in fee simple of the bond and credit represented by the bond. Title was acquired by purchase, which is money loaned on December 2011 to the **Government Development Bank in the amount of Half a Million Dollars**, which was paid in full and the bonds tendered to the broker who holds them on behalf of claimants. Debtor regularly paid to claimants the interest contracted for the bonds until the PROMESA Title III case was filed. Claimants were recognized as creditors, were invited to vote, and did vote in the plan confirmation process. The purchase sale, under the Laws of Puerto Rico (31 L.P.R.A. §3811-3813), provides title of the object of sale to the purchaser. Given that the object of the purchase was a credit, the contract is also a loan of money; see 31 L.P.R.A. §4511, §4572 and §3174.

### **NO SUBSTANTIVE OBJECTION IS PRESENTED**

The objection presented states it has no substantive basis to object; therefore, debtor admits it does have substantive obligations to claimants herein, or at minimum does not have any substantive basis upon which to deny liability and debt to claimants in the exact amount claimed. Therefore, substantively there is no case or controversy as to debtor's obligation, debt and liability to claimants. The objection appears to be directed to procedural classification of the documents filed, although the generality of the objection permits only to infer, assume or guess.

Out of an excess of caution, claimants preserve all fundamental constitutional rights including those acknowledged in *Granfinanciera S.A. v Nordberg*, 492 U.S. 33, 106 L.Ed 2d 26, 109 S. Ct. 2782 (1989)(trial by jury); *Northern Pipeline v. Marathon Pipeline Co.*, 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d. 958 (1982)(article III judge); and *Koontz v. St. Johns River Water Management Dist.*, 133 S.Ct. 2586,

2595-2598, 186 L.Ed.2d 697 (2013) (the imposition of an unconstitutional condition, i.e., filing of a proof of claim as a putative consent or waiver of fundamental constitutional rights). No assumption of waiver of the fundamental constitutional right to an article III judge and trial by jury may be implied; see *Wellness Intern. Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 2015 WL 2456619, decided on May 26, 2015, *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982) and *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574, 119 S.Ct. 1563 (1999); *Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475, (2011), at S.Ct. 2619-2620.

The credit and cause of action to collect is property under the laws of Puerto Rico, *Alicea v. Córdova*, 117 D.P.R. 676 (1986). All substantive constitutional and procedural rights are preserved, including the Taking of property constitutional limitations.

### CONCLUSION

Debtor presents no substantive objection. The objection appears to be limited to identify as which debtor, jointly administered, the liability corresponds. Again, that is The Government Development Bank. The precise exact data has been provided for debtor to reconcile its own books with the contracts and debts it has assumed, *supra*, and attached.

Debtor Government Development Bank has recognized claimants in the voting process as rightful claimants, with the vote so cast the plan was in fact confirmed (judicial notice of the plan confirmed); therefore, Debtor is judicially estopped from acting contrary to the position it has assumed in the same case. *Perry v. Blum*, 629 F.3d 1 (U.S.C.A. 1<sup>st</sup> 2010).

The evidence submitted is amply sufficient to establish the rightful credit, title and rights to payment for the amounts claimed, as adjusted by the confirmed plan.

WHEREFORE, the herein appearing parties respectfully request from this Honorable Court to approve the Proof of claim filed as to the Government Development Bank which a Title III Debtor, under the PROMESA Title II case, with such other provision as may be appropriate in constitution law and equity.

CERTIFICATE OF SERVICE: The undersigned hereby certifies that on this same date he has electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the parties of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17<sup>th</sup> day of January, 2019.

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ORIENTAL TOWER 9TH FLOOR  
SAN JUAN PR 00926  
TEL (787)474-1993

EXHIBIT A

## CONFIRMATION

MAIL TO

ARIADNE FEBLES GORDIAN  
EDILBERTO BERRIOS PEREZ TEN COM  
URB CALDAS  
2003 CALLE JOSE FIDALGO DIAZ  
SAN JUAN PR 00926-5323

For the account of

ARIADNE FEBLES GORDIAN  
EDILBERTO BERRIOS PEREZ TEN COM

Account Number: **NEB-018542**  
Account Type: **1**  
Your Investment Advisor: **Roberto J. Santos**  
Your Investment Advisor Number: **183**

For additional information please see the reverse side

### You Bought:

PUERTO RICO COMWLTH GOVT DEV BK SR NIS-SER H  
INT RATE 4.500% MATURITY 08/01/2019 DATED 12/28/2011  
BOOK ENTRY ONLY CALLABLE 02/01/13 @ 100.000  
1ST CPN DTE 02/01/12 CPN PMT MONTHLY ON 01  
MOODY RATING BAA1 S & P RATING BBB REVENUE BOND

Trade Date: 12-22-11  
Process Date: 12-22-11  
Settlement Date: 12-28-11  
Cusip: 745177-FC-4

We confirm the below trade, subject to the terms and conditions set forth on this confirmation.

TRADE NUMBER	QUANTITY	PRICE	PRINCIPAL	INTEREST	COMMISSION COMM EQUIV	SERVICE CHARGE	TRANS FEE	NET AMOUNT USD	CAPACITY
T70C64	500,000	100.00	500,000.00			6.31		500,006.31	5

Unsolicited Order

Yield 4.500% To Par Call Yield 4.500% To Maturity

Additional Call features exist that may affect yield. Complete information will be provided upon request

A copy of the official statement for this investment is available, or will be available by settlement date, at [www.emma.marb.org](http://www.emma.marb.org). Place the nine-digit CUSIP number listed above in the search field and press enter. If you do not have access to the Internet or would prefer a physical copy of the official statement, please contact your investment professional.

#### Additional Information that May Be Available on EMMA:

Advance refunding documents \* Continuing disclosures including annual financial statements and notices of material events \* Real-time and historical trade data \* Interest rates and auction results for municipal auction rate securities \* Interest rates for variable rate demand obligations \* Daily market statistics and educational material about municipal bonds

A prospectus for this security has been or is being delivered to you under separate cover.

THIS CONFIRMATION IS AN ADVICE NOT AN INVOICE. REMITTANCE OR SECURITIES ARE DUE ON OR BEFORE SETTLEMENT DATE

ORIENTAL FINANCIAL SERVICES CORP  
PROFESSIONAL OFFICE PARK V  
997 SAN ROBERTO STREET  
ORIENTAL TOWER 9TH FLOOR  
SAN JUAN PR 00926  
TEL (787)474-1993

EXHIBIT B

## CONFIRMATION

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